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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 APS&EE, LLC, a limited liability company,)
11)
12 Plaintiff,)
13 v.)
14 THE HILLMAN GROUP, INC., a)
15 corporation, THE HILLMAN COMPANIES,)
16 INC., a corporation, ACE HARDWARE)
17 CORPORATION, a corporation, LOWE'S)
18 HOME CENTERS, LLC, a limited liability)
19 company, and DOES 1 through 100, inclusive,)
20 Defendants.)

CASE NO. BC697492

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Teresa A. Beaudet
Dept.: 50
Compl. Filed: March 12, 2018

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment is entered into by and between Plaintiff, APS&EE,
4 LLC (“Plaintiff”) and Defendant, The Hillman Group, Inc. (“Defendant”). Plaintiff and
5 Defendant shall hereinafter collectively be referred to as the “Parties.”

6 **1.1.2** Plaintiff is an organization based in California with an interest in
7 protecting the environment, improving human health and the health of ecosystems, and
8 supporting environmentally sound practices, which includes promoting awareness of exposure to
9 toxic chemicals and reducing exposure to hazardous substances found in consumer products.

10 **1.1.3** Defendant is a person in the course of doing business as the term is
11 defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

12 **1.2 Allegations**

13 Plaintiff alleges that Defendant manufactured, distributed, sold, and/or offered to sell: (1)
14 Hillman hot-dipped galvanized nails, including 3 1/2” #461326; and (2) Hillman brass dowels
15 (aka rods or rounds), including 1/4" x 3ft., #11519, in the State of California causing users to be
16 exposed to lead without providing a clear and reasonable warning required by Proposition 65.
17 Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
18 cancer and birth defects or other reproductive harm. For purposes of this Consent Judgment, the
19 term “Nail(s)” shall mean Hillman hot-dipped galvanized nails, including 3 1/2” #461326
20 containing lead that are manufactured, sold or distributed for sale in California by Defendant; the
21 term “Dowel(s)” shall mean Hillman brass dowels (aka rods or rounds), including 1/4" x 3ft.,
22 #11519, containing lead that are manufactured, sold or distributed for sale in California by
23 Defendant; and the term “Product(s)” shall mean the Nails and Dowels, collectively.

24 Plaintiff served a sixty-day notice of violation dated December 18, 2017 (“60-Day
25 Notice”), to Defendant, as well as The Hillman Companies, Inc., Ace Hardware Corporation,
26 Lowe’s Home Centers, LLC, and the various public enforcement agencies regarding the alleged
27 violation of Proposition 65 from the Products. On March 12, 2018, Plaintiff, acting in the public
28 interest, filed the instant action in the Superior Court for the County of Los Angeles, alleging

1 violations of Proposition 65 from the Products.

2 **1.3 No Admissions**

3 Defendant denies all allegations in Plaintiff's 60-Day Notice and Complaint and
4 maintains that the Products have been, and are, in compliance with all laws, and that Defendant
5 has not violated Proposition 65. This Consent Judgment shall not be construed as an admission
6 of liability by Defendant but to the contrary as a compromise of claims that are expressly
7 contested and denied. However, nothing in this section shall affect the Parties' obligations,
8 duties, and responsibilities under this Consent Judgment.

9 **1.4 Jurisdiction And Venue**

10 For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled
11 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper
12 in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of
13 this Consent Judgment pursuant to California Code of Civil Procedure ("CCP") § 664.6 and
14 Proposition 65.

15 **1.5 Effective Date**

16 The "Effective Date" shall be the date this Consent Judgment is approved and entered by
17 the Court.

18 **2. INJUNCTIVE RELIEF**

19 **2.1 Reformulation Standards**

20 **2.1.1 Nails**

21 As of the Effective Date, Defendant shall not distribute for sale, sell, or offer for sale the
22 Nails in California unless (a) the galvanizing solution in which the Nails are submerged has a
23 lead content by weight of no more than 100 parts per million (0.01%) ("Reformulated
24 Products"), or (b) the Nails are distributed, sold, or offered for sale with a clear and reasonable
25 warning as described below in Section 2.2.

26 **2.1.2 Dowels**

27 As of the Effective Date, Defendant shall not distribute for sale, sell, or offer for sale the
28 Dowels in California unless (a) the brass contains no more than 100 parts per million (0.01%) of

1 Lead (“Reformulated Product”), or (b) each Dowel is distributed, sold, or offered for sale with a
2 clear and reasonable warning as described below in Section 2.2.

3 **2.2 Proposition 65 Warnings**

4 **2.2.1** Whenever a clear and reasonable warning is required under Section 2.1,
5 Defendant shall comply with 27 Cal. Code Regs. § 25601, et seq. (operative Aug. 30, 2018) or
6 use a warning with the capitalized and emboldened wording substantially similar to the
7 following:

8 **WARNING:** This product can expose you to Lead which is known to the State
9 of California to cause cancer and birth defects or other
10 reproductive harm. For more information go to
www.P65Warnings.ca.gov.

11 The warning shall be accompanied by a symbol consisting of a black exclamation point
12 in a yellow equilateral triangle with a bold black outline. Where the label for the product is not
13 printed using the color yellow, the symbol may be printed in black and white. The symbol shall
14 be placed to the left of the text of the warning, in a size no smaller than the height of the word
15 “WARNING”. For clarity, the use of the “short form” warning on Products in accordance with
16 27 Cal. Code Regs. § 25603(b) constitutes compliance with this Consent Judgment.

17 **2.2.2** Whenever a clear and reasonable warning is required under Section 2.1,
18 each unit shall carry said warning directly on each unit or its label or package with such
19 conspicuousness as compared with other words, statements or designs as to render it likely to be
20 read and understood by an ordinary consumer prior to sale. Warnings shall be given in
21 accordance with 27 Cal. Code Regs. § 25602(b) for Products that are sold by Defendant on the
22 internet and that do not satisfy the Section 2.1.1 and Section 2.1.2 reformulation standards.

23 **2.3 Existing Inventory**

24 The injunctive requirements of Section 2 shall not apply to Products that were in the
25 stream of commerce as of the Effective Date, which products are subject to the releases provided
26 in Section 4.1.

27 **3. PAYMENTS**

28 **3.1 Civil Penalty Pursuant To Proposition 65**

1 In settlement of all causes of action in Plaintiff's Complaint, Defendant shall pay a total
2 civil penalty of eight thousand dollars (\$8,000.00) to be apportioned in accordance with *Health*
3 *and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$6,000.00) for State of California
4 Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining 25%
5 (\$2,000.00) for Plaintiff.

6 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
7 made payable to "OEHHA" in the amount of \$6,000.00; and (2) a check or money order made
8 payable to "Law Offices of Lucas T. Novak" in the amount of \$2,000.00. Defendant shall remit
9 the payments within five (5) business days of the Effective Date, to:

10 Lucas T. Novak, Esq.
11 LAW OFFICES OF LUCAS T. NOVAK
12 8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

13 **3.2 Reimbursement Of Plaintiff's Fees And Costs**

14 Defendant shall reimburse Plaintiff's reasonable experts' and attorney's fees and costs
15 incurred in prosecuting the instant action, for all work performed through execution of this
16 agreement and entry of this Consent Judgment. Accordingly, Defendant shall issue a check or
17 money order made payable to "Law Offices of Lucas T. Novak" in the amount of thirty-two
18 thousand dollars (\$32,000.00). Defendant shall remit the payment within five (5) business days
19 of the Effective Date, to:

20 Lucas T. Novak, Esq.
21 LAW OFFICES OF LUCAS T. NOVAK
22 8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

23 **4. RELEASES**

24 **4.1 Plaintiff's Release Of Proposition 65 Claims Related To The Products**

25 APS&EE, acting in its individual capacity, and in the public interest, in consideration of
26 the promises and monetary payments contained herein, hereby forever and unconditionally
27 releases Defendant, its parents, subsidiaries, affiliated companies under common ownership or
28 control, shareholders, directors, members, officers, employees, attorneys, successors and

1 assignees, as well as any and all upstream and/or downstream suppliers, distributors,
2 wholesalers, retailers, customers, purchasers, cooperatives, cooperative members, licensees and
3 franchisees of the Products, including but not limited to The Hillman Companies, Inc., Ace
4 Hardware Corporation, Lowe’s Home Centers, LLC, and Origin Point Brands, LLC and their
5 parents, subsidiaries, affiliated companies under common ownership or control, shareholders,
6 directors, members, officers, employees, attorneys, successors and assignees (collectively
7 referred to as the “Released Parties”), from any violations of Proposition 65 or claimed
8 violations of Proposition 65 that have been, could have been or may in the future be asserted
9 against the Released Parties and arising out of or related to the claims asserted in APS&EE’s
10 Notice or Complaint regarding the failure to warn about exposures to Lead from the Products
11 sold, supplied, distributed, and/or offered for sale by the Released Parties in California before
12 and up to the Effective Date.

13 **4.2 Defendant’s Release Of APS&EE**

14 Defendant, and on behalf of the Released Parties, by this Consent Judgment, waives all
15 rights to institute any form of legal action against APS&EE, its shareholders, directors, members,
16 officers, employees, attorneys, experts, successors and assignees for actions or statements made
17 or undertaken, whether in the course of investigating claims or seeking enforcement of
18 Proposition 65 against Defendant in this matter.

19 **4.3 Waiver Of Unknown Claims**

20 Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil
21 Code which provides as follows:

22 “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
23 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
24 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
25 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
26 OR HER SETTLEMENT WITH THE DEBTOR.”

26 Each of the Parties waives and relinquishes any right or benefit it has or may have under
27 Section 1542 of California Civil Code or any similar provision under the statutory or non-
28 statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights

1 and benefits. The Parties acknowledge that each may subsequently discover facts in addition to,
2 or different from, those that it believes to be true with respect to the claims released herein. The
3 Parties agree that this Consent Judgment and the releases contained herein shall be and remain
4 effective in all respects notwithstanding the discovery of such additional or different facts.

5 **5. COURT APPROVAL**

6 Upon execution of this Consent Judgment by the Parties, Plaintiff shall file a noticed
7 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent
8 Judgment is not effective until it is approved and entered by the Court. It is the intention of the
9 Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such
10 approval, the Parties and their respective counsel agree to mutually employ their best efforts to
11 support the entry of this agreement in a timely manner, including cooperating on drafting and
12 filing any papers in support of the required motion for judicial approval.

13 **6. SEVERABILITY**

14 Should any part or provision of this Consent Judgment for any reason be declared by a
15 Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue
16 in full force and effect.

17 **7. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the State of
19 California.

20 **8. NOTICES**

21 All correspondence and notices required to be provided under this Consent Judgment
22 shall be in writing and delivered personally or sent by first class or certified mail addressed as
23 follows:

24 TO DEFENDANT:

25 Douglas Roberts
26 General Counsel
27 The Hillman Group, Inc.
28 10590 Hamilton Ave
Cincinnati, Ohio 45231-0012

TO PLAINTIFF:

Lucas T. Novak, Esq.
Law Offices of Lucas T. Novak
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

1 With a copy to:

2 John E. Dittoe, Esq.
3 Law Office of John E. Dittoe
4 70 Hazel Lane
5 Piedmont, CA 94611

6 **9. INTEGRATION**

7 This Consent Judgment constitutes the entire agreement between the parties with respect
8 to the subject matter hereof and may not be amended or modified except in writing.

9 **10. COUNTERPARTS**

10 This Consent Judgment may be executed in counterparts, each of which shall be deemed
11 an original, and all of which, when taken together, shall constitute the same document.

12 Execution and delivery of this Consent Judgment by email, facsimile, or other electronic means
13 shall constitute legal and binding execution and delivery. Any photocopy of the executed
14 Consent Judgment shall have the same force and effect as the originals.

15 **11. AUTHORIZATION**

16 The undersigned are authorized to execute this Consent Judgment on behalf of their
17 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
18 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this
19 Consent Judgment and not subject to any conflicting obligation that will or might prevent or
20 interfere with the execution or performance of this Consent Judgment by said party.

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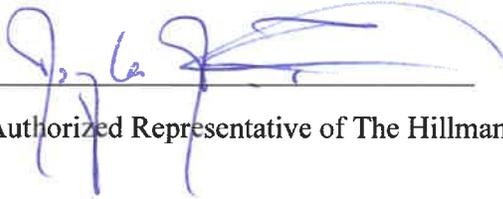
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1 **12. DISMISSALS**

2 Following court approval and entry of this Consent Judgment, and following Defendant's
3 compliance with the terms of payment described above in Section 3, Plaintiff shall file dismissals
4 with prejudice as to Lowe's Home Centers, LLC and Ace Hardware Corporation.

5
6 **AGREED TO:**

7 Date: 9/13/18

8
9 By: 

10 Authorized Representative of The Hillman Group, Inc.

11
12 **AGREED TO:**

13 Date: _____

14
15 By: _____

16 Authorized Representative of APS&EE, LLC

17
18 **IT IS SO ORDERED.**

19 Dated: _____

20 JUDGE OF THE SUPERIOR COURT

1 **12. DISMISSALS**

2 Following court approval and entry of this Consent Judgment, and following Defendant's
3 compliance with the terms of payment described above in Section 3, Plaintiff shall file dismissals
4 with prejudice as to Lowe's Home Centers, LLC and Ace Hardware Corporation.

5
6 **AGREED TO:**

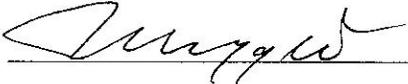
7 Date: _____

8
9 By: _____

10 Authorized Representative of The Hillman Group, Inc.

11
12 **AGREED TO:**

13 Date: 9/14/18

14
15 By:  _____

16 Authorized Representative of APS&EE, LLC

17
18 **IT IS SO ORDERED.**

19 Dated: _____

20 JUDGE OF THE SUPERIOR COURT